



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-D-

DATE: SEPT. 18, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an electrical engineering researcher, seeks classification as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

I. LAW

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

*In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 13, 2013, at which time he held a Master of Science degree in Electrical Engineering and was a Ph.D. candidate and research assistant in electrical engineering at [REDACTED] in Canada. An accompanying statement indicated that the Petitioner’s graduate research, in the field of nanophotonics and optoelectronics, has focused on improving the efficiency and functionality of light-emitting diode (LED) technologies and optical communications networks, and that his past projects have included the development of photonic crystal ring resonator-based devices, quantum dot micro-tube lasers, and nanowire light-emitting diodes. The Petitioner indicated that this work has resulted in the improvement and increased understanding of optical devices and networks.

Documentation supporting the Form I-140 included evidence that the Petitioner had authored or co-authored over thirty publications in his field at the time of filing, along with documentation about the rankings of the journals in which he had published work and evidence that his work had been cited 389 times. The Petitioner also provided copies of his credentials and documentation of his activities as a peer-reviewer for multiple journals.

In addition, the Petitioner submitted letters from former supervisors and independent academic researchers in his field describing his research in detail and attesting to its significance. The letters indicated that the Petitioner’s work is widely used by other researchers and described its

applications. For instance, [REDACTED] an associate professor of Electrical and Systems Engineering at [REDACTED] stated in a March 19, 2013, letter that the Petitioner's research is "being used by engineers across the board" and "is enabling us to fabricate various micro/nano photonic devices from advanced materials with desired properties." In a February 30, 2013, letter, [REDACTED] of the University of [REDACTED] in Iran stated that the Petitioner's research is "evolving entire paradigms of research and changing the way electrical engineers think about integrated circuits and photonic crystals," and that his publications are "working to make optical devices better engineered, more affordable, and more applicable for consumer use." The remaining letters offered similar statements regarding the importance and prominence of the Petitioner's research within his field.

The Director issued a request for evidence (RFE) on September 13, 2013, seeking additional information and evidence about the Petitioner's proposed work. The Director requested "probative evidence that [the] proposed employment is realistic and obtainable," including letters from current or prospective employers, employment contracts, or a statement from the Petitioner detailing plans on how he intends to continue his work in the United States.

In response, the Petitioner submitted the requested statement regarding his future plans, indicating his intent to conduct research aimed at expanding the use of light emitting diode (LED) technologies and the use of integrated nanophotonic circuits in chip-level optical communications.

The Director denied the petition on July 7, 2014, finding that the Petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On appeal and in response to our April 8, 2015, RFE, the Petitioner submits documentation of his communications with two interested prospective employers in the United States, copies of articles in industry-specific media outlets reporting on his research results and innovations, and updated citation information regarding his publications.

### III. ANALYSIS

The record reflects that the Petitioner's research relates to improving the efficiency of optical technologies, which offers both economic and environmental benefits on a national scale. Accordingly, he has established the substantial intrinsic merit and national scope of his proposed work.

With respect to the third prong of the *NYSDOT* analysis, the record supports a finding that the Petitioner's work has had a degree of influence on the field as a whole. *Id.* at 219, n.6. The submitted letters give context to the Petitioner's past research and explain its importance in ways that the record otherwise supports. The letters, media articles, and citation records provide persuasive evidence that the Petitioner's past research on photonic crystal ring resonator-based devices, quantum dot micro-tube lasers, and nanowire light-emitting diodes, has been considered significant and influential in his field. This track record of success, together with the evidence regarding the petitioner's plans to expand on his past research, justify a projection that that the

Petitioner will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

### III. CONCLUSION

As discussed above, the evidence in the record establishes that the benefit of retaining this Petitioner's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the Petitioner has established that a waiver of the requirement of the job offer and labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden.

**ORDER:** The appeal is sustained.

Cite as *Matter of M-D-*, ID# 10918 (AAO Sept. 18, 2015)